

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

|                            |   |                       |
|----------------------------|---|-----------------------|
| MARK WESLEY BUCHANAN,      | ) |                       |
|                            | ) |                       |
| Petitioner,                | ) |                       |
|                            | ) |                       |
| v.                         | ) | Case No. CIV-20-964-J |
|                            | ) |                       |
| STATE OF OKLAHOMA, et al., | ) |                       |
|                            | ) |                       |
| Respondents.               | ) |                       |

**ORDER**

Petitioner, a state prisoner appearing pro se, filed an amended petition for writ of habeas relief under 28 U.S.C. § 2254 [Doc. No. 5] and a motion for leave to proceed in forma pauperis [Doc. No. 6]. The matter was referred for initial proceedings to United States Magistrate Judge Shon Erwin consistent with 28 U.S.C. § 626(b)(1)(B), (C). On preliminary review, Judge Erwin found Petitioner has sufficient funds to pay the \$5.00 filing fee and recommended that his motion for leave to proceed in forma pauperis be denied. [Doc. No. 7]. Petitioner filed an objection [Doc. No. 8] and this Court must now make a de novo review of the recommendation and may accept, reject, or modify the recommended decision. *See* 28 U.S.C. § 626(b)(1); Fed. R. Civ. P. 72(b)(3).

The filing fee for a petition for writ of habeas corpus is \$5.00 and Petitioner has well over \$500 in his mandatory prison account. [Doc. No. 6]. Petitioner does not dispute he has sufficient funds but believes he cannot use his mandatory prison savings to pay the filing fee. He further argues he cannot make any payment until the Court orders it. *See id.* Petitioner is incorrect. In Oklahoma, inmates may use their institutional savings accounts to pay court filing fees. *See* Okla. Stat. tit. 57, § 549(5) (“Funds from [an inmate’s savings] account may be used by the inmate for fees or costs in filing a civil or criminal action . . . .”); *see also Todd v. Attorney General of Oklahoma*, 377 F. App’x 832, 834 (10th Cir. 2010) (affirming the district court’s IFP denial where

the inmate had sufficient funds in his savings account and “under Oklahoma law . . . these funds may be used to pay the costs of federal filing fees”). Thus, the Court finds that Petitioner is financially able to prepay the \$5.00 filing fee of this proceeding. Additionally, it is Petitioner’s responsibility to file the necessary documents with prison officials to facilitate the payment. To aid in that endeavor, Petitioner shall provide officials with a copy of this Order.

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 7], DENIES Petitioner’s motion for leave to proceed in forma pauperis [Doc. No. 6], and ORDERS Petitioner to pay the \$5.00 filing fee in full within twenty-one days, or no later than December 7, 2020. Petitioner is advised that if he does not pay the full \$5.00 filing fee on or before that date, this action will be dismissed without prejudice.

IT IS SO ORDERED this 16<sup>th</sup> day of November, 2020.



BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE